

**KRONENBERGER BURGOYNE, LLP**

Karl S. Kronenberger (Bar No. 226112)  
Henry M. Burgoyne, III (Bar No. 203748)  
Deepa Krishnan (Bar No. 228664)  
150 Post Street, Suite 520  
San Francisco, CA 94108  
Telephone: (415) 955-1155  
Facsimile: (415) 955-1158  
karl@kronenbergerlaw.com  
hank@kronenbergerlaw.com  
deepa@kronenbergerlaw.com

Attorneys for Plaintiff  
SECOND IMAGE, INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**SECOND IMAGE, INC.**, a California  
corporation,

Plaintiff,

vs.

**RON SIN PHOTOCOPY, Inc.**, a California  
Corporation; **CHRISTINA SANCHEZ**, an  
individual; and **DOES 1-10**,

Defendants.

Case No. C-07-05242-PJH

**PLAINTIFF SECOND IMAGE, INC.'S  
OPPOSITION TO DEFENDANT  
CHRISTINA SANCHEZ'S AMENDED  
MOTION TO DISMISS FIRST  
AMENDED COMPLAINT**

KRONENBERGER BURGOYNE, LLP  
150 Post Street, Suite 520  
San Francisco, CA 94108  
www.kronenbergerlaw.com

## I.

**INTRODUCTION**

Though difficult to decipher, the Motion to Dismiss (the “Motion”) of Defendant Christina Sanchez (“Defendant”) seemingly argues that the First Amended Complaint (“FAC”) does not make sufficient federal allegations against Defendant. However, as set forth more fully below, the Motion glosses over the critical allegations in the FAC, set forth in paragraphs 6 and 20-23, and misapplies the law of conspiracy. In a nutshell, because Plaintiff Second Image, Inc. (“Plaintiff”) has properly pled conspiracy and Defendant’s involvement in that conspiracy, Defendant’s Motion fails.

## II.

**SUMMARY OF RELEVANT FACTUAL ALLEGATIONS**

The FAC contains several allegations tying Defendant to the remaining defendants, through a conspiracy to commit the alleged underlying misconduct. These statements include:

- **Description of the Conspiracy:** “Whenever in this First Amended Complaint reference is made to the acts of Ronsin, Sanchez, or Does 1-10, that allegation shall refer collectively to all Defendants who, as more fully alleged below, are, upon information and belief, co-conspirators and/or are engaged in an express or implied principal/agent relationship whereby individual defendants operated under actual or ostensible authority to perform the acts so alleged, and/or whereby individual defendants authorized, aided, abetted, furnished the means to, advised, or encouraged the acts of the other individual defendants.” (FAC ¶ 6.)

- **Scope of the Conspiracy Agreement:** “Upon information and belief, Defendants entered into an agreement to unlawfully gain access to Second Image’s private website, so as to gain access to Second Image’s trade secrets, to pilfer Second Image’s clients, and to obtain an unfair business advantage over Second Image.” (FAC ¶ 20.)

• **Wrongful Acts Taken in Furtherance of the Conspiracy:** “Upon information and belief, in furtherance of their conspiracy, Defendants portrayed Sanchez and/or the Law Firm as a bona fide consumer of Second Image’s services so as to gain access to Second Image’s private website through the use of the username and password provided to Sanchez. Upon information and belief, in furtherance of the conspiracy, Defendants then hacked into other clients’ accounts in other portions of the private website so as to unlawfully access over 100 patient records on 8 different occasions from January 31, 2005 through April 24, 2007. At least 70 client accounts hosted on Second Image’s private website were thus unlawfully accessed by Defendants.” (FAC ¶ 21.)

### III.

As the above allegations show, Plaintiff has stated that Defendant engaged in a conspiracy to commit several legal wrongs, including violations of the Computer Fraud and Abuse Act (“CFAA”) and violations of the Lanham Act. “By participation in a civil

1 conspiracy, a coconspirator effectively adopts as his or her own the torts of other  
 2 coconspirators within the ambit of the conspiracy. In this way, a coconspirator incurs tort  
 3 liability co-equal with the immediate tortfeasors.” *Klistoff v. Superior Court of Los*  
 4 *Angeles County*, 157 Cal. App. 4th 469, 479 (2007) (internal quotations omitted).

5 In subsection IV of her Motion, Defendant criticizes Plaintiff’s conspiracy  
 6 allegations, arguing that “[i]n California, civil conspiracy is not a legal cause of action”  
 7 (Motion at 6), and “[w]ithout an allegation of specific intent to commit the state law torts,  
 8 plaintiff has not stated a claim under which relief can be granted under California law.”  
 9 (Motion at 7.) These criticisms are not grounded in fact or law, and are inapplicable to  
 10 the FAC.

11 First, Plaintiff does not allege conspiracy as a separate cause of action. Rather,  
 12 the FAC alleges that Defendant conspired with the other defendants to perpetrate the  
 13 alleged misconduct, such as the alleged violations of the CFAA and the Lanham Act.  
 14 Second, contrary to Defendant’s claim, the torts described by Plaintiff in the FAC are not  
 15 all common law torts applying California law. In fact, in her Motion, Defendant discusses  
 16 Plaintiff’s Lanham Act and CFAA claims—statutory claims arising under federal law.<sup>1</sup>  
 17 Finally, Plaintiff has specifically stated that each defendant—including Defendant —  
 18 entered into the conspiracy “so as to gain access to Second Image’s trade secrets, to  
 19 pilfer Second Image’s clients, and to obtain an unfair business advantage over Second  
 20 Image.” (FAC ¶ 21.) Thus, even assuming Plaintiff must allege a “specific intent,” Plaintiff  
 21 has done so.

22 However, such allegations are unnecessary, because to plead conspiracy a  
 23 plaintiff must only allege: “(1) the formation and operation of the conspiracy, (2) the  
 24 wrongful act or acts done pursuant thereto, and (3) the damage resulting from such act  
 25 or acts.” See *Wasco Products, Inc. v. Southwall Technologies, Inc.*, 435 F.3d 989, 992

26  
 27 <sup>1</sup> Plaintiff notes that Defendant has filed a cross-claim in this action setting forth two  
 28 state law claims. While not clear from the face of the cross-claims, Plaintiff has  
 apparently relied on this Court’s supplemental jurisdiction (28 U.S.C. §1367) as the basis  
 for jurisdiction, stating that jurisdiction is “co-extensive with the Complaint.”

(9th Cir. 2005) (citations omitted) (describing pleading requirements under stricter standard, where conspiracy alleged as separate cause of action, and where plaintiff faced with heightened pleading requirements under Rule 9(b)). Plaintiff has satisfied this standard.

Having properly pled a conspiracy, Plaintiff has also resolved Defendant's remaining concerns, as expressed in Sections I, II, III, and V of the Motion. For example, in Section I of her Motion, Defendant argues that Plaintiff's Section 1030(a)(2)(C) claim must be dismissed because Plaintiff did "not allege . . . that Sanchez's conduct in providing Ronsin with the username and password was conduct which involved an interstate or foreign communications." However, as discussed above, Defendant adopted as her own the actions of her coconspirators within the ambit of the conspiracy. Likewise, in Section II of her Motion, Defendant argues that Plaintiff's Section 1030(a)(4) claim must be dismissed because Plaintiff "has not alleged that Sanchez obtained anything of value by intentionally or negligently providing Ronsin with her username and password." Yet, in paragraph 27 of the FAC, for example, Plaintiff alleges that the coconspirator defendants unlawfully obtained Plaintiff's proprietary business information. This same logic extends to Defendant's remaining arguments as set forth in Sections III and V of her Motion.<sup>2</sup>

Ultimately, Defendant, through her Motion, ignores the way a conspiracy functions, in an apparent attempt to avoid responsibility for her actions. Neither California nor federal law countenances such avoidance, and Defendant's Motion should be denied.

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<sup>2</sup> In Section III of her Motion, Defendant argues that Plaintiff failed to state a claim upon which relief can be granted under Section 1030(a)(6)(A), because Plaintiff has not alleged that "Sanchez 'knowingly and with intent to defraud' provided her username and password to Ronsin." Finally, in Section V of her Motion, Defendant argues that the Lanham Act claim must be dismissed because, "nowhere does plaintiff allege that Sanchez caused its falsely advertised goods to enter interstate commerce." Such allegations are present, contrary to Defendant's statements. See e.g., FAC at ¶¶ 27 and 40.

IV.

**CONCLUSION**

For the foregoing reasons, Defendant's Motion should be denied in its entirety.

Respectfully Submitted,

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KRONENBERGER BURGOYNE, LLP

By: /s/ Deepa Krishnan  
Karl S. Kronenberger  
Henry M. Burgoyne, III  
Deepa Krishnan  
Attorneys for Plaintiff  
Second Image, Inc.

KRONENBERGER BURGOYNE, LLP  
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